

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 63059-8-I
Respondent,)	
)	DIVISION ONE
v.)	
)	UNPUBLISHED OPINION
DESTINY D. THOMAS,)	
B.D. 01/10/92,)	
)	
Appellant.)	FILED: March 8, 2010
)	

Appelwick, J. — D.D.T., a juvenile, appeals her conviction for assault in the fourth degree for slapping her mother. She claimed to have acted in self-defense. Where a person uses unreasonable force and acts as the first aggressor, her actions cannot be justified as self-defense. The evidence is sufficient to conclude that D.D.T. acted as first aggressor and used unreasonable force. We affirm.

FACTS

Sixteen year old D.D.T.'s mother, Antonia, arrived home from work in the afternoon, not expecting her daughter to be home from school yet. When she heard noises upstairs, she grabbed a knife from the kitchen and went up to investigate. Antonia found D.D.T. in her bedroom with a boy and exchanged angry words with her daughter.

The next day, the two again exchanged angry words, followed by D.D.T. going to

her room and slamming the door. Antonia entered the room, wagging her finger at D.D.T. while reprimanding her. D.D.T. then slapped Antonia on the face, attempted to grab her neck, and hit and kicked her. The women struggled, falling on the bed and then onto the floor. Antonia finally removed herself and called the police.

When the police arrived, D.D.T. informed one officer that she and her mother had argued, but there had not been an assault. D.D.T. later told another officer that Antonia attempted to choke her. The officers observed injuries on D.D.T.'s arms and legs, as well as a red mark on her neck, and the injury on Antonia's face.

D.D.T. testified at trial that she acted in self-defense. She testified that her mother had pushed her finger on her forehead. She stated that when she raised her arms to prevent her mother from touching her, Antonia grabbed D.D.T.'s sweatshirt, choked her, and threw her down on the bed. During testimony D.D.T. did not admit to hitting her mother's face. She did not explain why she would have reason to fear her mother, although she did testify that Antonia held a knife in her face while screaming obscenities when she found D.D.T. with the boy the day before.

The juvenile court found D.D.T. guilty of fourth degree assault, domestic violence. The court found Antonia "considerably more credible" as a witness than D.D.T. The court concluded that D.D.T. did not act in self-defense, that she acted as the initial aggressor, and that she used unreasonable force.

D.D.T. appeals.

DISCUSSION

D.D.T. contends the State presented insufficient evidence to prove she did not act in self-defense. Evidence is sufficient to support a conviction if, after viewing the

evidence in the light most favorable to the State, it allows any rational trier of fact to find all of the elements of the crime charged beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A claim of insufficiency admits the truth of the State's evidence and all inferences that can reasonably be drawn from it. Id.

Whether D.D.T. acted in self-defense depends upon whether she acted in response to an offense against her person and whether D.D.T. used only as much force as necessary in response. RCW 9A.16.020(3).¹ Force is necessary when the amount of force is reasonable and no reasonably effective alternative exists. RCW 9A.16.010(1). The State must disprove self-defense beyond a reasonable doubt. State v. Walden, 131 Wn.2d 469, 473–74, 932 P.2d 1237 (1997).

There is sufficient evidence in the record to support the court's finding that D.D.T.'s use of force was unreasonable and that she acted first. A majority of the State's evidence came from Antonia's testimony. Antonia testified that she wagged her finger in D.D.T.'s face. She then testified that D.D.T. hit her first. Antonia testified that she struggled with D.D.T. only to restrain her from hitting and kicking her. Additional evidence presented by the State included testimony by the responding officers. The officers stated that D.D.T. informed one officer that there had not been an assault, but subsequently changed her story to allege that Antonia had attempted to choke her.

¹ RCW 9A.16.020(3) states:

The use, attempt, or offer to use force upon or toward the person of another is not unlawful in the following cases:

...

(3) Whenever used by a party about to be injured, or by another lawfully aiding him or her, in preventing or attempting to prevent an offense against his or her person, or a malicious trespass, or other malicious interference with real or personal property lawfully in his or her possession, in case the force is not more than is necessary.

The evidence is sufficient to support the trial court's findings. We affirm.

Appelwick, J.

WE CONCUR:

Schindler, CT

Cox, J.